UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/50/514
5 October 1995

ORIGINAL: ENGLISH

Fiftieth session
Agenda item 112 (b)

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Report of the Secretary-General

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I. INTRODUCTION

1. The General Assembly, at its forty-ninth session, adopted resolution 49/192 of 23 December 1994 entitled "Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" by which the Assembly urged States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities as set out in the Declaration, including through the facilitation of their full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development in their country; and also urged States to take, as appropriate, all the necessary constitutional, legislative, administrative and other measures to promote and give effect to the principles contained in the Declaration.

2. In paragraph 8, the Assembly called upon the United Nations High Commissioner for Human Rights to promote, within his mandate, the implementation of the principles contained in the Declaration and to continue to engage in a dialogue with Governments concerned for that purpose. The Assembly also requested the Secretary-General to report to it at its fiftieth session on the implementation of the resolution under the item entitled "Human rights questions".

3. Pursuant to that resolution, the Secretary-General, by a communication dated 5 April 1995, invited States, interested intergovernmental and non-governmental organizations, special representatives, special rapporteurs and relevant working groups of the Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities to submit their comments to the Centre for Human Rights by 4 July 1995.

4. As of 25 August 1995, replies had been received from the Governments of Argentina, Cyprus, the Czech Republic, Denmark, Dominica, Germany, the Lao People's Democratic Republic, Maldives, Mauritius, Morocco, the Russian Federation, Saint Lucia, Saudi Arabia, Spain and Ukraine.

5. Information was also provided by the relevant organs, bodies and special rapporteurs of the United Nations giving due regard to the Declaration in the execution of their mandates.

6. The United Nations High Commissioner for Human Rights submitted information on his activities in the field of minority protection.

7. A reply was also received from the United Nations Educational, Scientific and Cultural Organization (UNESCO).

8. The Council of Europe sent a document on the work accomplished and currently being carried out in this field by the Council and its organs (European Court of Human Rights and European Commission on Human Rights).

9. Replies were received from two non-governmental organizations, Caritas Internationalis and the World Muslim Congress.

10. The present report is submitted to the General Assembly in pursuance of resolution 49/192.

II. PROMOTION AND PROTECTION BY STATES OF THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

11. Fifteen Governments, one specialized agency, one intergovernmental and two non-governmental organizations replied to the request of the Secretary-General to submit contributions to the Centre for Human Rights. The Governments of Cyprus, the Czech Republic, Morocco, the Russian Federation, Spain and Ukraine provided substantive information on the promotion and protection of persons belonging to minorities within their countries. In view of the fact that only a few replies were received and that little substantive information was submitted on the promotion and implementation of the Declaration, it was neither possible to describe the promotion by States of the relevant provisions of the Declaration in detail, nor to provide an accurate representative reflection of the measures taken by the international community as a whole.

A. Protection of the existence of persons belonging to minorities

12. The Governments of Cyprus, the Czech Republic, Dominica, Mauritius, Morocco, the Russian Federation and Ukraine recognized the existence of national, ethnic, religious and linguistic minority groups on their respective territories, and mentioned the relevant constitutional and legislative provisions protecting them. In addition, the Russian Federation stated that everyone shall have the right to voluntarily determine and state his national identity on the basis of self-identification, and the Czech Republic provided information on the acquisition by minorities of Czech citizenship.

B. Right of minorities to enjoy their own culture

13. In the Russian Federation, a draft law on national and cultural autonomy has been elaborated which confirms the rights of ethnic communities to preserve and develop their cultural and national individuality, in particular, to protect, restore and preserve their age-old cultural and historical environment. In Ukraine, the 1992 Fundamentals of Legislation on the Culture of Ukraine are aimed at the protection of cultures of national minorities living on its territory. There exist 30 Russian and 30 Ukrainian-Russian theatres, one Crimean Tatar theatre in Simferopol, a Hungarian theatre in Beregiv, the Jewish and Romany theatres in Kiev and approximately 2,000 various ethnic amateur performance troupes in Ukraine. The Ministry of Culture of the Czech Republic has provided financial support for cultural activities of the Romany minority. The Government of Mauritius has established various funds to preserve and promote the African, Indian and Islamic cultures, and that of the Ilois community.

C. Right of minorities to practise and profess their own religion

14. The Constitution of the Lao People's Democratic Republic stipulates that the State shall respect and protect the legal activities of persons practising Buddhism and other religions. The Government of Morocco stated that the Jewish Moroccan minority enjoys the constitutional right to manifest its religion, whereby freedom of worship is guaranteed.

D. Right of minorities to use their own language

15. The Governments of Cyprus, the Czech Republic, Germany, Morocco and the Russian Federation guarantee minorities the use of their own language. In the Czech Republic and Morocco, the Romany and Tamazight minorities have the right to disseminate and receive information in their respective language through a variety of newspapers and magazines and television programmes. At five universities in the Czech Republic projects have been developed to acquaint primary schoolteachers with basic knowledge of the Romany language and culture to stimulate the preparation of textbooks for Romany children. The Danish and Sorbian minorities in Germany are encouraged to make use of their language in public life and both minority languages are taught in schools in the areas in which these minorities live. The Constitution of the Russian Federation guarantees that everyone has the right to use his native language and freely choose the language of communication, education, training and creative work.

E. Right of minorities to participate effectively in cultural, religious, social, economic and public life

16. The Government of Morocco stated that the participation of the Jewish Moroccan minority in all aspects of political, economic and social life of Moroccan society is guaranteed. In particular, cultural activities include the promotion of literary and artistic works such as the publication of poetry and the production of films and theatre.

F. Right of minorities to participate effectively in decisions at the national level

17. In Cyprus the right to vote and stand for election without any discrimination on the ground of ethnic origin or any other ground is safeguarded by law. All religious groups have the right to be represented in the Communal Chamber of the community to which they opted to belong and the election of their representatives in the House of Representatives is guaranteed. The Government of Morocco pointed out that in accordance with article 12 of the Constitution all citizens have equal access to public office.

G. Right of minorities to establish and maintain their own associations

18. According to information provided by the Government of Cyprus, every person has the constitutional right to freedom of association with others, including the right to form and join trade unions. The Government of the Lao People's Democratic Republic pointed out that citizens enjoyed the rights of association with others and of peaceful assembly if the relevant activities are not contrary to existing laws and regulations. The Governments of the Czech Republic, Morocco and Ukraine stated that 30 Romany civic associations and 4 Romany organizations, 11 Tamazight associations and 237 ethno-cultural societies were established in their respective countries.

H. Equality before the law

19. The Government of Morocco pointed out that in accordance with article 5 of the revised Constitution of 4 September 1992, all Moroccans are equal before the law and no minority is subject to any form of discrimination.

I. Mechanisms, procedure and other measures to promote and protect the rights of persons belonging to minorities

20. The Government of Cyprus stated that it had introduced into its national legislation the prohibition of acts amounting to incitement to discrimination, hostility, hatred and violence on account of ethnic or racial origin or for religious reasons. The Government of Spain pointed out that it has included a new aggravating circumstance into the Criminal Code regarding offences against persons and property where the act has been committed on racist, anti-Semitic or other grounds relating to the ethnic or national origin, ideology, religion or beliefs of the victim. The Czech Republic mentioned that education in democracy, tolerance and human rights was added to the primary and secondary school curricula. The Russian Federation is currently elaborating a draft law on national-cultural autonomy in the Federation which would guarantee democratic rights for Russian minorities irrespective of where they live.

J. Commitments under international treaties and agreements

21. The Governments of Cyprus, the Czech Republic, Denmark, Germany and Spain have recently signed the Council of Europe framework Convention for the Protection of National Minorities, thus clearly demonstrating their commitment to the protection of national minorities in general (for further details about the provisions of the framework Convention, see the section on the Council of Europe below). In addition, the Russian Federation has signed a number of treaties with other States, including the Declaration on the principles of cooperation with the Republic of Hungary on guarantees for the rights of national or ethnic, religious and linguistic minorities. Spain has adopted the Organization Act providing for the necessary measures, in accordance with domestic law, to comply with the establishment of an international tribunal for the purpose of prosecuting persons responsible for various violations of

international humanitarian law committed in the territory of the former Yugoslavia.

III. ACTIVITIES OF THE RELEVANT ORGANS AND BODIES OF THE UNITED NATIONS GIVING DUE REGARD TO THE DECLARATION IN THE EXECUTION OF THEIR MANDATES

A. Commission on Human Rights

22. The Commission on Human Rights, at its fifty-first session in 1995, considered the reports prepared by the Secretary-General on the subject (A/49/415 and Add.1 and E/CN.4/1995/84). In its resolution 1995/24 the Commission, noting with appreciation the working paper prepared by the Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities, Mr. Asbjørn Eide (E/CN.4/Sub.2/1994/36 and Corr.1), containing suggestions for a comprehensive programme for the prevention of discrimination and protection of minorities, took note of General Assembly resolution 49/192 in which the Assembly called upon the Commission to examine, as a matter of priority, ways and means to promote and protect effectively the rights of persons belonging to minorities, as set out in the Declaration. In addition, the Commission decided to authorize the request of the Subcommission, contained in resolution 1994/4, to establish, initially for a three-year period, an intersessional working group consisting of five of its members to meet each year for five working days in order to promote the rights of persons belonging to national or ethnic, religious and linguistic minorities, as set out in the Declaration, and in particular to:

(a) Review the promotional and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

(b) Examine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments;

(c) Recommend further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.

23. In its resolution 1995/31, the Economic and Social Council authorized the establishment of this working group.

B. Subcommission on Prevention of Discrimination and Protection of Minorities

24. The first session of the working group on minorities of the Subcommission was held at the United Nations Office at Geneva from 28 August to 1 September 1995. Its report will be considered by the Subcommission at its forty-eighth session in 1996.

25. In paragraph 2 of its resolution 1994/4, the Subcommission requested the Secretary-General to invite Governments and competent intergovernmental and non-governmental bodies to submit their comments on the recommendations contained in addendum 4 to the final report presented by Mr. Asbjørn Eide on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1993/34/Add.1-4), and to make the comments available at the forty-seventh session of the Subcommission.

26. In compliance with this request, the Secretary-General prepared a report (E/CN.4/Sub.2/1995/33 and Add.1-2) which had relevance for the promotion of the Declaration. While examining what could be done on a national level to promote ethnic accommodation and prevent ethnic conflict, education, language and cultural policy and practice were considered. In particular, it was pointed out that education policy had a potentially great impact on the development of a sense of mutual respect and civic identity among people.

27. The report also dealt with a fairly wide spectrum of economic, political and social policies which had a considerable impact on ethnic relations. The view was expressed that countries that were successful in achieving rapid and broad-based growth tended to find it easier to accommodate the material claims and aspirations of various ethnic groups. However, rising prosperity might also intensify ethnic competition or harm certain groups. On the other hand, policies that contributed to economic stagnation and decline, thus intensifying poverty and insecurity, were likely to exacerbate ethnic tensions and provided fertile ground for those wishing to exploit such tensions. The distribution of resources, in addition to the absolute increase or decrease in prosperity, was a key factor in the rise of discontent. Strategies that increased economic inequalities, especially if they coincided with ethnic divisions, marginalized certain groups and exacerbated ethnic discrimination and tension. It also pointed out that mature modern democracies must take into account social pluralism and, therefore, seek a participatory and consensual character. In such a system, majority rule was mitigated by the minority groups' right of access to public decision-making, coalition structures of government, overrepresentation of minorities within State institutions, veto powers to protect vital minority and other group interests, and a spirit of compromise. A non-monolithic conception of the people was a precondition for the enjoyment of fair opportunities by minority groups in this idea of government.

C. United Nations Centre for Human Rights

28. The Centre for Human Rights has continued to assist the General Assembly, the Economic and Social Council, the Commission and the Subcommission in the effective promotion of the Declaration. In addition, it began to service the above-mentioned working group on minorities. The Centre also carries out research and studies in this field, assists in the preparation of the reports of the Secretary-General, the High Commissioner for Human Rights and special rapporteurs. It also administers the programme of advisory services and technical assistance relating to the promotion of the Declaration as requested by the General Assembly in its resolution 49/192.

29. In particular, in 1994 and from January to July 1995, country-wide needs assessment missions were conducted for Armenia, Azerbaijan, Belarus, El Salvador, Georgia, Equatorial Guinea, Guinea, Haiti, Kazakstan, Kyrgyzstan, the Republic of Moldova, the Russian Federation, Rwanda and the United Republic of Tanzania, designed to form the basis of country programmes of technical assistance in each of those States. During the mission to the States of the Caucasus, Kazakstan, Kyrgyzstan, the Republic of Moldova, the Russian Federation and Rwanda, representatives of the Centre held consultations with representatives of national minority groups, in order that their views and concerns might be effectively responded to in the Centre's programme development activities for those States. In addition, the members of the mission held discussions on minority issues with relevant government officials, including governmental advisers on minority issues. As a result of these missions, the Centre produced comprehensive needs assessment reports for Armenia, Azerbaijan and Georgia each of which devoted particular attention to proposals for training and institutional strengthening aimed at ensuring the effective protection and promotion of the rights of national, ethnic, religious and linguistic minorities consistent with international human rights standards, in particular with those embodied in the Declaration. The Centre for Human Rights also provided assistance in drafting a law on the promotion and protection of the rights of persons belonging to minorities in Georgia and submitted comments and recommendations on a draft law on minority rights to the Republic of Moldova.

30. A seminar on the promotion and protection of the rights of minorities in Romania was held at Bucharest from 18 to 21 October 1994. It was organized in cooperation with the Romanian Government and participants were invited from among the national minorities in the country, national non-governmental organizations and governmental institutions. Issues discussed included ethnic and linguistic rights, as well as religious and cultural rights of minorities.

31. From June to December 1994, the Centre for Human Rights organized a seminar and two workshops at Bujumbura. The specific objective of the seminar and one of the workshops was to provide participants with information on peaceful conflict-resolution techniques and on the use of legal, administrative and human rights institutions for the settlement of disputes. Courses of this nature were targeted to both relevant government agencies and to certain groups in society such as trade unions, minority groups, NGOs and political parties. The role and functions of the judiciary, national human rights institutions, administrative agencies and alternative dispute-resolution mechanisms were also important topics. It may be recalled that the Commission on Human Rights, in its resolution 1993/24, called upon the programme of advisory services and technical assistance of the Centre for Human Rights to make available expert assistance, inter alia, in the area of conflict resolution involving minorities.

D. United Nations High Commissioner for Human Rights

32. Activities aimed at the promotion and protection of the rights of persons belonging to minorities constitute an integral and significant part of the High Commissioner's mandate as set out in General Assembly resolution 48/141 by which the Assembly decided that the High Commissioner for Human Rights would be the United Nations official with principal responsibility for United Nations human

rights activities under the direction and authority of the Secretary-General, and entrusted him with the responsibility for, inter alia, promoting and protecting the effective enjoyment by all of all civil, cultural, economic, political and social rights; providing, through the Centre for Human Rights and other appropriate institutions, advisory services and technical and financial assistance; coordinating relevant United Nations education and public information programmes in the field of human rights; engaging in a dialogue with all Governments in the implementation of his/her mandate with a view to securing respect for all human rights; and coordinating the human rights promotion and protection activities throughout the United Nations system. The General Assembly has further decided to give to the High Commissioner a specific mandate relating to the protection of minorities. In its resolution 49/192, the Assembly entrusted the High Commissioner with the responsibility to promote the implementation of the principles contained in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and to continue to engage in a dialogue with Governments concerned for that purpose.

33. Protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities is an imperative deriving from the Vienna Declaration and Programme of Action. The World Conference on Human Rights reaffirmed the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The World Conference further stated that those persons have the right to enjoy their own culture, to profess and practise their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination.

34. It is in the spirit of the Vienna Declaration and Programme of Action that the High Commissioner situates his activities relating to the rights of minorities. He has repeatedly stressed that the peaceful coexistence of minorities, the harmonious relations among communities and respect for each group's identity are great assets to the multi-ethnic and multicultural mosaic of our global society. Every individual, every group and every nation finds richness in diversity and can benefit from an exchange of ideas, experiences and views. However, the coexistence of different groups is not always peaceful, and problems relating to minorities are today one of the major sources of international and internal conflicts involving widespread and at times massive human rights violations with severe repercussions for the peace and stability of the community of nations. In this multidimensional context, the question of the protection and promotion of the human rights of persons belonging to national or ethnic, religious and linguistic minorities is of overriding importance for the respect of human rights generally and central to the promotion of understanding, tolerance and solidarity between and among communities and Governments.

35. At the Fourteenth Regional Conference of European United Nations Associations (Geneva, 7-9 November 1994), speaking on the question of minority rights, the High Commissioner stressed that the State must be the common home of all ethnic, religious and linguistic groups residing in its territory; those groups must enjoy de facto equality and none of their members should be a second-class citizen. He also stated that in situations where there was no

declared conflict, there were several mechanisms and institutions that could play a preventive role by seeking constructive solutions. In that respect, the bodies set up under the United Nations international conventions relating to human rights all had an important role to play, one which could in fact be strengthened in accordance with the spirit of the Declaration.

36. The High Commissioner wishes to continue to engage in a constructive dialogue with Governments to campaign for the promotion and implementation of the Declaration and other relevant international instruments; to appeal for the full respect of the rights of persons belonging to minorities; to contribute to the promotion of human rights education; to offer advisory and technical assistance to strengthen the national instruments to protect the rights of persons belonging to minorities; and promptly to respond to emergency situations involving minorities. The High Commissioner has referred to issues relating to minorities as complex human problems and has appealed for full respect for the human rights of persons belonging to minorities as expressed in the Declaration, the International Covenant on Civil and Political Rights and other international instruments. In addition, he has appealed for government policies that would respond to the legitimate expectations of all people living in the country and enable everyone to feel secure in his/her rights. In the activities of the High Commissioner relating to Rwanda, Burundi and the former Yugoslavia, problems concerning the protection of persons belonging to minorities remain high on the agenda. More information on those activities is contained in his report to the Commission on Human Rights at its fifty-first session (E/CN.4/1995/98). Relevant information will also be included in his report to the present session of the General Assembly. During his country visits, the High Commissioner, in addition to government officials, meets and exchanges views with representatives of minority groups.

37. The High Commissioner develops cooperation with international organizations, including regional organizations, aimed at the promotion and protection of the rights of persons belonging to minorities and the resolution of problems related thereto. He is undertaking activities aimed at an effective coordination of the cooperation between United Nations organs and bodies in this area, including the flow of relevant information, exchange of experience and joint activities. The coordination of efforts should enable these organs and bodies to work as a system.

38. The High Commissioner intends to strengthen further the minorities component of the activities of the Centre for Human Rights, including the programme of advisory services and technical assistance; to set up within the United Nations system an information system for the protection of the rights of persons belonging to minorities; to place emphasis on various aspects of the protection of the rights of persons belonging to minorities and on minority-related conflict resolution in human rights education, including the implementation of the activities of the United Nations Decade for Human Rights Education; and to provide full logistical and substantive support to the Subcommission's working group on minorities.

39. In the view of the High Commissioner, further progress in the field of the protection of minorities depends on concerted efforts by Governments and international and non-governmental organizations aimed at the creation of a

culture open to understanding the richness that exists in a multicultural and multi-ethnic society. The protection of the rights of persons belonging to minorities, based on mutual tolerance and acceptance, promises to open new perspectives free of the disasters common to many regions of the world. The Centre for Human Rights, in close cooperation with other bodies and organs of the United Nations, is available for developing activities aimed at facilitating the full participation of persons belonging to national or ethnic, religious and linguistic minorities in all aspects of the political, economic, social, religious and cultural life of their societies and in the economic progress and development of their countries.

40. The High Commissioner also takes action with regard to minorities in the broader context of the rise of xenophobia and new forms of racial and ethnic discrimination and of reported attacks on migrant workers, immigrants, asylum-seekers and refugees. He has received assurances that the authorities concerned are determined to take the necessary measures to deal with such manifestations. In that context, the European Union's declaration on the subject adopted at the Corfu Summit in June 1994 is to be welcomed.

IV. SPECIALIZED AGENCIES

United Nations Educational, Scientific and Cultural Organization

41. One of UNESCO's mandates is to contribute to the struggle against discrimination in all its fields of competence including discrimination against persons belonging to minorities. A number of UNESCO's standard-setting instruments concerning cultural rights cover this subject fairly comprehensively and embrace individuals, regions, groups, peoples, nation-States and even humankind in general. Recognizing that States should first of all create conditions and provide guarantees for the implementation of cultural rights, not only to eliminate discrimination but also to undertake affirmative action, UNESCO's standard-setting instruments stress that this responsibility should be shared with other social actors.

42. Of particular importance in this respect is the UNESCO Convention against Discrimination in Education (1960) which provides for protection of the educational rights of minorities and individuals. Similarly, the UNESCO Declaration on Race and Racial Prejudice (1978) contains provisions for promoting non-discriminatory practices. These instruments, as well as the Recommendation Concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (1974) are monitored by way of periodic collection of information as regards their implementation in the member States.

43. It is also pertinent to mention that in decision 3.3 taken at its 104th session (September-October 1977), the Executive Board of UNESCO laid down the procedures for the examination of cases and questions submitted to UNESCO concerning the violation of human rights in its fields of competence.

44. UNESCO continues to implement activities relating to the protection of the cultural rights of persons belonging to minorities, following decision 4.41

taken by the Executive Board at its 144th session in April-May 1994, at which the Executive Board noted with satisfaction the ongoing activities of the organization in that regard.

45. UNESCO is at present collecting material on national legislation and policies concerning the protection of the rights of persons belonging to minorities, in order to gain a better perception of the status of protection given at the national/local level. The organization is also gathering information on bilateral arrangements for such protection. These could provide the bases for further reflections and activities in this field.

46. A notable activity relates to the preparation of a manual on human rights teaching in institutions of higher education. The manual would contain a chapter on the rights of persons belonging to minorities, and thereby contribute to educational action in this field.

47. During the coming biennium 1996-1997, UNESCO will give particular attention to the prevention of discrimination against persons belonging to disadvantaged and vulnerable groups, notably in the sphere of education and culture. With a view to promoting the implementation of UNESCO's Convention and Recommendation against Discrimination in Education, member States will be provided with a compilation of examples of national education laws, policies and measures against discrimination in education, with particular emphasis on the educational and cultural rights of women and girls, refugees, migrants and persons belonging to minorities.

48. UNESCO has contributed to the safeguard of a common heritage composed of several cultures as well as the promotion of artistic expression of groups or persons belonging to different cultural communities. Pilot projects to promote the cultural activities of nomads have been implemented in order to demonstrate that those cultures, linking their originality and creativity to their adoptive societies, constitute immense sources of richness for humanity.

49. UNESCO has also made an intellectual contribution further to the request of research institutions and multicultural or intercultural centres involved in the daily management of the phenomenon of social exclusion arising from cultural discrimination. Moral and technical support have been provided to the launching and coordination of projects on the religious or cultural convergence within various multi-ethnic nations. Certain key issues were identified:

(a) Creating a way to encourage dialogue between minorities and Governments;

(b) Enabling Governments to review and explore the recommendations of Asbjørn Eide and the Declaration, including the implementation by United Nations agencies and bodies;

(c) Facilitating the effective promotion of the Declaration and Asbjørn Eide's recommendations;

(d) Ensuring that Governments (and, where possible, minorities) explore models of good practice including the internationalization standards on minorities;

(e) Entering into a dialogue with treaty bodies on the Declaration and Asbjørn Eide's recommendations;

(f) Seeking to incorporate the issue of minority rights appropriately into all existing United Nations mechanisms.

V. TREATY BODIES

A. Human Rights Committee

50. The Human Rights Committee continued to monitor the observance of the International Covenant on Civil and Political Rights. It considered and commented on a number of reports submitted by States parties to the Covenant, with specific reference to the implementation of article 27. The Committee, in its interpretation of the implementation by States parties of article 27 and in its observations, suggestions and recommendations, took into account General Comment No. 23(50) adopted by the Committee at its fiftieth session on 6 April 1994. The Committee referred to the issue of minorities in its consideration of the periodic reports at its fifty-fourth session of, among others, Ukraine, Latvia, Tunisia, Morocco, New Zealand and the United States of America.

51. In its dialogue with States parties, the Committee requested on a number of occasions clarification of the measures taken with respect to the implementation of article 27 in the light of its General Comment No. 23. In certain cases, the Committee regretted that the necessary steps to adopt legislative and other measures to give effect to article 27 had not been taken and that the level of the protection of minorities was still not in conformity with the Covenant.

52. At its fifty-second session, the Committee considered Communication No. 511/1992, Ilmari Länsman et al. v. Finland, under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights. The authors of the communication are Ilmari Länsman and 47 other members of the Muotkatunturi Herdsmen's Committee and members of the Angeli local community. The authors affirm that the quarrying of stone on the flank of the Etelä-Riutusvaara mountain and its transportation through their reindeer-herding territory would violate their right under article 27 of the Covenant, in particular their right to enjoy their own culture, which has traditionally been and remains essentially based on reindeer husbandry. In the light of the information provided by the parties and of paragraph 7 of its General Comment No. 23 on article 27, the Committee concluded that quarrying on the slopes of Mount Riutusvaara in the amount that had already taken place did not constitute a denial of the authors' right, under article 27, to enjoy their own culture, and thus found no breach of article 27 or any other provision of the Covenant.

B. Committee on the Elimination of Racial Discrimination

53. While the International Convention on the Elimination of All Forms of Racial Discrimination does not contain any article aimed specifically at the promotion and protection of the rights of minorities, article 2(2) is of relevance to ethnic or racial groups as it imposes an obligation on States parties to undertake affirmative action in respect of groups which have suffered from discriminatory practices. According to article 2(2) States must take affirmative action "when the circumstances so warrant". In respect of the applicability of this article in situations where the Government concerned denies the identity or existence of a particular group, it seems that the practice of the Committee on the Elimination of Racial Discrimination tends towards the applicability of broad criteria of assessment.

54. At its forty-sixth session in March 1995, the Committee considered the question of the nature of the right to self-determination of ethnic or religious groups or minorities. During the discussion, the view was expressed that Governments should, in accordance with article 2(2) of the Convention, be sensitive to the aspirations of ethnic groups, particularly their rights to lead lives of dignity, to preserve their cultures, to share equitably in the fruits of national growth and to play their part in the government of the countries of which their members are citizens. Governments should consider, within their respective constitutional frameworks, vesting ethnic or linguistic groups of their citizens, with the affairs which are particularly relevant to the preservation of the identities of such groups. The Committee expressed its opposition to the fragmentation of States and stressed the importance of adhering to the principles of international law concerning secession.

55. At its forty-sixth session in March 1995 and its forty-seventh session in August 1995, the Committee considered periodic reports submitted by States parties and made observations on the various measures undertaken by certain States with a view to the promotion of racial or ethnic tolerance among communities. Particular measures were referred to in the concluding observations with regard to the periodic reports of, among others, Belarus, Croatia, Guatemala, Italy, New Zealand, Nicaragua, Nigeria, Romania, Sri Lanka and the United Arab Emirates. The Committee adopted two decisions on Burundi 6(46) and 1(47), one on Rwanda 7(46), two on Papua New Guinea 8(46) and 3(47) and one on Bosnia and Herzegovina 2(47).

VI. SPECIAL RAPPORTEURS

56. In a number of cases, special rapporteurs appointed by United Nations human rights organs to investigate human rights situations in specific regions and countries and on thematic issues have addressed the rights of persons belonging to national or ethnic, religious and linguistic minorities within their mandates or have been confronted with violations of the rights of persons belonging to minorities.

57. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Maurice Glèlè-Ahanhanzo, in his report to the Commission at its fifty-first session (E/CN.4/1995/78)

referred, inter alia, to minority situations and the promotion and protection of the rights of persons belonging to minorities in Australia and the Federal Republic of Yugoslavia. In his report on the mission he undertook to the United States of America (E/CN.4/1995/78/Add.1), "The Special Rapporteur found sociological inertia, structural obstacles and individual resistance hindering the emergence of an integrated society based on the equal dignity of the members of the American nation and willing to accept ethnic and cultural pluralism" (para. 112). In his conclusions and recommendations, he stressed that: "It should be recognized that when persons from ethnic minorities aspire to equal treatment, they are not asking for favours, but seeking to enjoy the rights guaranteed by the United States Constitution in their daily lives by virtue of their status as full citizens or lawful residents" (para. 112, rec. 2).

58. The Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, Mr. Tadeusz Mazowiecki, in his tenth periodic report (E/CN.4/1995/57, paras. 92-97), addressed the reported discrimination against the Bulgarian minority in Serbia in the areas of education, the media, and the maintenance of their own associations. He also addressed the issue of the treatment of Croatian nationals of Serbian origin. In his final periodic report (E/CN.4/1996/9), the Special Rapporteur described the situation of minorities living in various localities of the former Yugoslavia and made special reference to discrimination against minorities in the field of education. He noted that there are reports that education in the mother tongue of the minorities is being systematically eliminated and that the Bulgarian, Hungarian and Croat minorities face difficulties in maintaining an education system which is acceptable to their culture. The Special Rapporteur also mentioned that all minorities reportedly experience discrimination and violence against their cultural and religious institutions.

59. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, in his report (E/CN.4/1995/61) mentioned that in a number of cases that had come before him in 1994, it was alleged that the victims subjected to death threats or extrajudicial, summary or arbitrary executions belonged to national, ethnic, religious or linguistic minorities. Such cases were said to have occurred in 19 countries.

60. The Special Rapporteur for the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief in his report (E/CN.4/1995/91) referred to reports of discrimination against religious minorities. In his conclusions and recommendations, the Special Rapporteur once again deplored frequently serious infringements of the rights of persons belonging to religious minorities in countries with an official or clearly predominant majority religion.

VII. INTERGOVERNMENTAL ORGANIZATIONS

A. Council of Europe

61. In accordance with the declaration of the heads of State and Government of the member States of the Council of Europe adopted at a summit conference held on 8 and 9 October 1993, a framework convention specifying the principles which the contracting States committed themselves to respect in order to assure the protection of national minorities was drafted and adopted by the Committee of Ministers on 10 November 1994. The framework Convention for the Protection of National Minorities was opened for signature on 1 February 1995 and has already been signed by the following States: Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland; it has also been ratified by Romania. It is the first ever legally binding multilateral instrument protecting national minorities in general. The Convention contains provisions covering a wide range of areas: non-discrimination; promotion of effective equality; promotion of the conditions regarding the preservation and development of culture and the preservation of religion; language and traditions; freedoms of assembly, association, expression, thought, conscience and religion; access to and use of the media; linguistic freedoms; education; transfrontier contacts; international and transfrontier cooperation; participation in economic, cultural and social life; participation in public life; and the prohibition of forced assimilation. The adequacy of the measures taken by the parties to give effect to the principles are evaluated by the Committee of Ministers, assisted by an advisory committee, on the basis of periodic reports submitted by the States parties.

62. The Summit Conference also entrusted the Committee of Ministers to begin work on drafting an additional protocol to the European Convention on Human Rights in the cultural field containing provisions guaranteeing individual rights, in particular for persons belonging to national minorities. The drafting process of this additional protocol is to be completed by the end of 1995.

63. These instruments are a valuable supplement to the European Convention on Human Rights and the European Charter for regional or minority languages which was opened for signature by member States on 5 November 1992. The Charter, which will enter into force upon ratification by five member States, has, as at 1 June 1995, been ratified by Finland, Hungary and Norway and signed by Austria, Cyprus, Denmark, Germany, Liechtenstein, Luxembourg, Malta, the Netherlands, Spain and Switzerland. The Charter lays down objectives and principles to be respected by States and proposes concrete measures to put them into effect in the fields of education, courts of law, administrative authorities and public services, the media, cultural facilities and economic and social life.

B. European Commission on Human Rights

64. It should be recalled that the European Convention on Human Rights does not lay down any specific minority rights. Important considerations in respect of the Convention include the following. Its text refers to "national minorities" only in article 14; non-discrimination can only be inferred with respect to any of the other articles of the Convention. Although "language" is one of the grounds on which discrimination is prohibited under article 14, the right to the use of a particular language in contacts with the authorities is not generally guaranteed. Article 25 recognizes the right of petition of "persons", "non-governmental organizations" and "groups of individuals"; with reference to the latter two categories, each member of the group must be affected by the alleged violation of the Convention. The possibility of complaining about the treatment of a minority as such exists in the context of an inter-State application under article 24 (e.g. Cyprus v. Turkey which concerned, inter alia, the treatment of the enclaved Greek Cypriot population in the north of Cyprus).

65. With reference to the case law dealing specifically with minority situations, the following may be mentioned:

(a) In a case concerning a linguistic census in Austria, in which the applicant claimed to belong to the Slovene minority although he did not use the Slovene language, the Commission considered that there was no violation of the Convention as the protection of individual members of a linguistic minority is limited to the right not to be discriminated against in the enjoyment of the rights contained in the Convention on the ground of belonging to the minority;

(b) In several cases the Commission denied that a right to "linguistic freedom" was enshrined in the Convention. In two cases concerning the use of the Slovene and the Flemish languages respectively in civil court procedures, the Commission considered it relevant that the legal provisions on court language were complied with and that the applicants had bilingual lawyers. Similarly, in a case concerning the refusal of a criminal court in France to hear witnesses in the Breton language, the Commission considered that there were no violations of article 6, paragraph 1, or of article 14, since the Convention did not guarantee the right of witnesses to speak in a language of their choice and the witnesses had not claimed that they were unable to speak French. In three other cases, the Commission considered that a right to "linguistic freedom" could not be derived from article 9 (freedom of thought and conscience) or article 10 (freedom of expression) as the applicants were not prevented from expressing their thoughts freely in the language of their choice. Concerning elections to legislative bodies established according to linguistic criteria, the Commission considered that non-representation of the minority constitutes a breach of article 3 of the First Protocol to the Convention, but the Court did not confirm this view. It held that the compulsion to vote for candidates who belong to either one or the other language group in the national parliamentary institutions and to the corresponding community council was not a disproportionate limitation on the free expression of the opinion of the people in the choice of the legislature;

(c) In areas not covered by the special provisions, the Convention organs have concluded a contrario that no right to the use of a particular language is guaranteed by the Convention to citizens in their contacts with the authorities for administrative proceedings in general, concerning the use of language in municipal councils and social service assistance centres, and concerning the language used for the registration of a minority party wishing to take part in elections;

(d) In a case concerning alleged discrimination of Lapps as a minority in Norway, the Commission again confirmed that the Convention does not guarantee specific rights to minorities. It observed that the applicants had the right to vote and stand for elections to the Norwegian Parliament but stressed that Lapps have no secured representation for themselves. In further cases concerning Lapps in Norway, the Commission recognized that a particular life-style of a minority is protected by article 8 as being "private life", "family life" or "home". The issue in this case was whether the construction of a hydroelectric power station interfered with the lives of fishermen and reindeer breeders. The Commission rejected the applicants' complaints under article 14 as there was no indication that they were treated in a manner which could be considered discrimination, nor had they been forced to abandon their life-styles. The same principle was subsequently repeatedly confirmed in cases concerning caravan sites for Gypsies. In most cases, the contested measures were found to be in conformity with the provision of article 8, paragraph 2. However, a breach of the Convention was for the first time established by the Commission in its report of 11 January 1995 on a case involving the United Kingdom which has recently been referred to the Court;

(e) The Commission also considered cases where a cultural identity is derived from the fact that the applicant belongs to a particular religious group. The Commission approached these on a case-by-case basis in respect of article 9, paragraph 2. An important distinction which is being made in this respect is whether a particular practice is an essential part of the manifestation of religion. Not every act influenced by a religion or belief is recognized as a "practice" within the meaning of article 9 and, accordingly, the protection of article 14 cannot be invoked. In a case in which the applicant had sought to bring criminal charges in the United Kingdom against the author and publisher of The Satanic Verses, the Court ruled that there was no protection of Muslims against blasphemy against their religion by a publication and that articles 9 and 14 were inapplicable. However, religious discrimination contrary to article 14 can be invoked where another Convention right is at issue. In another case involving Austria, the Court considered it as discriminatory, invoking article 14 in conjunction with article 8, in a child custody case to make a distinction between the parents on the ground of their religion, i.e the possible effects on the social life of the children concerned of their being associated with a particular religious minority (in this case, Jehovah's Witnesses). The Commission considered that it is incompatible with the concept of a pluralist society to assume that members of a minority group will automatically be socially marginalized;

(f) With regard to religious education, the Court in several cases determined that States are required to provide for exemptions for children who do not belong to the majority religion. The system of regulating access to

school according to linguistic criteria was, however, not found to be in breach of article 14. This was confirmed in a number of follow-up cases. The Commission also considered that the right claimed by the applicants to have the imprint of their own personality and of the culture they acknowledge as their own take first place among the factors conditioning the education of their children, in order that their children's thinking should not become alien to their own, was outside the scope of articles 9 and 10;

(g) The question of interference with the expression of a particular culture has hardly ever arisen in the Strasbourg case law. In the case of alleged discrimination against the Slovene minority in Austria by virtue of the failure to license a private radio station and an alleged insufficiency of programmes on the public broadcasting system, the Commission did not find elements of discrimination; the Court did not express an opinion;

(h) Several cases decided by the Commission concerned special protection of particular minorities under national law and resultant restrictions on the freedom of expression of persons not belonging to those minorities. The Commission considered such restrictions as being justified under article 10, paragraph 2, of the Convention. In the case of defamatory remarks made against Gypsies in Germany, the Commission found that there had been no interference with individual rights.

VIII. NON-GOVERNMENTAL ORGANIZATIONS

66. Caritas Internationalis mentioned that the situation of minority groups was of great concern to the organization, and some of Caritas's member organizations were very much involved in assisting such groups in defending the dignity of their members. The World Muslim Congress stated that, through their branches throughout the world, greater awareness about the rights of minorities was being promoted and the abolition of discriminatory laws called for.

IX. CONCLUSIONS AND RECOMMENDATIONS

67. In view of the small number of replies received by the Centre for Human Rights and the lack of substantive information contained therein, it is difficult to arrive at conclusions of a general nature which accurately represent the measures taken to give effect to the Declaration by the international community as a whole. In particular, it seems that the replies focused mainly on the constitutional and legislative provisions protecting and promoting the rights of persons belonging to minorities, with many Governments listing relevant legislation at length. It would have been more useful for the purposes of this report if Governments had submitted substantive information on the actual measures taken to protect minorities, including any affirmative action undertaken to give effect to the Declaration. It should thus be underscored that what is needed is information about the practical implementation of the Declaration.

68. It would therefore seem indispensable for the preparation of future reports on the subject, and in order to provide a more accurate overview of the measures

taken to implement the principles contained in the Declaration, that a greater number of States submit relevant and complete information in response to the request of the Secretary-General.

69. Evidence that minority rights in general and their implementation in particular are vital issues is manifested in the consideration of those issues and related proposals made at the Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities. Those proposals, in particular the ones made by non-governmental organizations and included in the report of the Secretary-General submitted to the Subcommission at its forty-seventh session (E/CN.4/Sub.2/1995/33, paras. 69-74), may be considered as conducive to furthering concrete measures to be taken by the relevant United Nations organs, organizations and bodies and by Governments themselves aimed at the promotion of the Declaration.

70. The Commission on Human Rights and subsequently the Economic and Social Council authorized the Subcommission on Prevention of Discrimination and Protection of Minorities to establish a working group on minorities with the mandate referred to above. It is hoped that the working group becomes a genuine forum for dialogue and mutual understanding between Governments and minorities and that possible solutions to minority problems will be found.

71. As the United Nations High Commissioner for Human Rights stated with reference to the role of the United Nations in situations where there is no declared conflict, the bodies set up under the United Nations international conventions relating to human rights all have an important role to play, which could in fact be strengthened in accordance with the spirit of the Declaration. The role of the High Commissioner is especially important in developing networks of cooperation with international and regional bodies on the issue of minority protection.

72. The High Commissioner will continue to pay particular attention, in his ongoing dialogue with Governments, to issues involving minorities. He will pursue the task entrusted to him to provide, through the Centre for Human Rights and other appropriate institutions, programmes of technical assistance and advisory services and to promote activities in the field of information and education on issues concerning minorities.

73. UNESCO described the wide range of activities it is undertaking with respect to the protection of minorities, especially in the cultural field, which serve as a basis for further reflection and action. UNESCO recommended, in particular, that the ongoing dialogue between minorities and Governments be encouraged, that the recommendations contained in the report of Mr. Asbjørn Eide and the text of the Declaration be widely disseminated, and that all relevant issues concerning minorities be incorporated into the United Nations procedures and mechanisms.

74. With reference to the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, it is important to stress that countries should continue to include in their periodic reports measures taken with regard to the protection and promotion of the rights of minorities, with particular reference to article 27 of the International Covenant on Civil and Political

Rights and General Comment No. 23 of the Committee on article 27, and the relevant provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

75. The information provided by special rapporteurs illustrates the vulnerability of minority groups and the urgent need for every United Nations body to focus its attention on the treatment accorded to these groups within the framework of its respective mandate.

76. Coordination of the activities of the organs and organizations of the United Nations system should be further encouraged and properly financed as recommended to the Secretary-General by the World Conference on Human Rights. Given the recommendations of the World Conference, high-level officials of the relevant United Nations bodies and specialized agencies should, at their annual meetings, assess the impact of their strategies and policies on the enjoyment of all human rights, and it would seem desirable and appropriate that those officials consider coordination between their programmes aimed at the promotion and protection of the rights of persons belonging to minorities. Those organs and organizations, in particular ILO, UNHCR, UNESCO and UNICEF, should be encouraged to submit information on the subject regularly.

77. The activities of the Council of Europe ideally complement, on a regional basis, those of the United Nations in the field of minority protection. It would be important that such regional arrangements be adopted by other regional organizations as well, as they can in certain circumstances provide a more appropriate regional focus to the solution of minority problems. Ongoing cooperation between the United Nations and regional organizations on the issue of minority protection is of particular importance.

78. A greater number of non-governmental organizations could submit information about their activities contributing to the application and realization of the Declaration and assist in the efforts at the international and national levels to achieve positive results in regard to the protection of minorities that may or may not be covered by United Nations instruments.